
By: Delegates Poole, Guns, Benson, Clagett, Dypski, and Snodgrass

Introduced and read first time: February 17, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement Process - Competitive Sealed Proposals**

3 FOR the purpose of modifying the procurement law to provide for the consideration of
4 past performance as a criterion under the competitive sealed proposal process;
5 modifying preferences concerning the preferred procurement process; authorizing
6 competitive sealed proposals to be used for a procurement involving the
7 development of computer hardware or software technology; authorizing discussions
8 under the competitive sealed proposal process related to past performance;
9 requiring certain procedures applicable to the competitive sealed proposal process
10 involving procurements exceeding a specified value and requiring the development
11 of certain technology as a significant component of the contract; requiring the
12 Board of Public Works to establish, by regulation, a certain program pertaining to
13 past performance; specifying the goal in considering past performance; defining a
14 term; and generally relating to the use of competitive sealed proposals,
15 technology-related procurements, and evaluation criteria under the State
16 procurement law.

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 13-101, 13-102, and 13-104
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1996 Supplement)

22 BY adding to
23 Article - State Finance and Procurement
24 Section 12-110 and 13-104.1
25 Annotated Code of Maryland
26 (1995 Replacement Volume and 1996 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - State Finance and Procurement**

2 12-110.

3 (A) IN THIS SECTION, "PAST PERFORMANCE" HAS THE MEANING STATED IN §
4 13-101 OF THIS ARTICLE.

5 (B) IN THE EVALUATION OF PROPOSALS UNDER A COMPETITIVE SEALED
6 PROPOSAL PROCESS, IT IS THE GOAL OF THE STATE:

7 (1) TO ENSURE THAT THE STATE OBTAINS THE BEST VALUE IN THE
8 EVALUATION OF PROPOSALS;

9 (2) TO ENCOURAGE THE HIGHEST LEVEL OF PERFORMANCE BY
10 CONTRACTORS DOING BUSINESS WITH THE STATE; AND

11 (3) NOT TO ESTABLISH A MINIMUM FLOOR FOR MEASURING
12 RESPONSIBILITY.

13 (C) THE BOARD SHALL ESTABLISH BY REGULATION A PROGRAM FOR:

14 (1) THE EVALUATION OF PAST PERFORMANCE UNDER §§ 13-104 AND
15 13-104.1 OF THIS ARTICLE; AND

16 (2) THE TRACKING OF PAST PERFORMANCE AS AN EVALUATION
17 CRITERION APPLICABLE TO FUTURE CONTRACTS.

18 13-101.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) "Evaluated bid price" means the price of a bid after adjustment in accordance
21 with objective measurable criteria.

22 (c) (1) "Objective measurable criteria" means standards that enable the State
23 to compare the economy, effectiveness, or value of the subject of the bids.

24 (2) "Objective measurable criteria" includes standards of reliability,
25 operational costs, maintainability, useful life, and residual value.

26 (D) "PAST PERFORMANCE" MEANS PERFORMANCE BY A RESPONSIBLE
27 OFFEROR UNDER ANY OTHER CONTRACTS INVOLVING THE SAME OR SIMILAR
28 PRODUCTS, SERVICES, OR TECHNOLOGY TO THAT REQUIRED UNDER A PROPOSAL,
29 WHETHER THE CONTRACTS WERE WITH THE STATE, ANOTHER GOVERNMENTAL
30 ENTITY, OR A FOR-PROFIT OR NONPROFIT ENTITY, DURING A TIME PERIOD
31 SPECIFIED IN A REQUEST FOR PROPOSALS, IN TERMS OF:

32 (1) BUSINESS PRACTICES;

33 (2) COST CONTROL;

34 (3) END USER SATISFACTION;

35 (4) PERFORMANCE OF KEY PERSONNEL INVOLVED IN
36 ADMINISTRATION OF THE CONTRACTS;

3

- 1 (5) QUALITY OF PRODUCT OR SERVICE;
- 2 (6) TIMELINESS OF PERFORMANCE;
- 3 (7) RECORD OF PAYING SUBCONTRACTORS; AND
- 4 (8) OTHER FACTORS REQUIRED BY THE BOARD BY REGULATION.

5 13-102.

6 (a) Except as provided in Subtitle 3 of this title, all procurement by units shall be
7 by competitive sealed bids OR COMPETITIVE SEALED PROPOSALS unless one of the
8 following methods specifically is authorized:

9 (1) [competitive sealed proposals under § 13-104 or § 13-105 of this
10 subtitle;

11 (2)] noncompetitive negotiation under § 13-106 of this subtitle;

12 [(3)] (2) sole source procurement under § 13-107 of this subtitle;

13 [(4)] (3) emergency or expedited procurement under § 13-108 of this
14 subtitle; or

15 [(5)] (4) small procurement under § 13-109 of this subtitle.

16 (b) (1) In awarding a procurement contract for human, social, cultural, or
17 educational service, OR A PROCUREMENT CONTRACT REQUIRING THE
18 DEVELOPMENT OF COMPUTER HARDWARE OR SOFTWARE TECHNOLOGY, the
19 preferred method is by competitive sealed proposals under § 13-104 of this subtitle.

20 (2) In awarding a procurement contract for a lease of real property, the
21 preferred method is by competitive sealed proposals under § 13-105 of this subtitle.

22 13-104.

23 (a) Competitive sealed proposals may be used if:

24 (1) the procurement is for human, social, cultural, or educational services
25 OR REQUIRES THE DEVELOPMENT OF COMPUTER HARDWARE OR SOFTWARE
26 TECHNOLOGY;

27 (2) with the approval of the head of a unit, the procurement officer
28 determines that specifications cannot be prepared that allow an award based on the
29 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
30 11-202(3) of this article, the bid most favorable to the State; or

31 (3) the head of the unit determines that:

32 (i) the need to use a method other than competitive sealed bids is
33 sufficiently compelling to override the general public policy that favors awarding
34 procurement contracts on the basis of competitive sealed bids; and

35 (ii) the use of competitive sealed bidding for that procurement
36 contract is not practicable or not advantageous to the State.

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1 (b) (1) Whenever procurement is based on competitive sealed proposals, a
2 procurement officer shall seek proposals by issuing a request for proposals.

3 (2) A request for proposals shall include a statement of:

4 (i) the scope of the procurement contract;

5 (ii) the factors, including PAST PERFORMANCE AND price, that will
6 be used in evaluating proposals; and

7 (iii) the relative importance of each factor.

8 (3) UNLESS THE PROCUREMENT OFFICER MAKES A WRITTEN
9 DETERMINATION THAT PAST PERFORMANCE, ANY COMPONENT OF PAST
10 PERFORMANCE UNDER § 13-101 OF THIS SUBTITLE, OR THE REQUIRED WEIGHT OF
11 PAST PERFORMANCE IS NOT APPROPRIATE IN A PROCUREMENT CONTRACT PRIOR
12 TO ISSUANCE OF A REQUEST FOR PROPOSALS, PAST PERFORMANCE SHALL EQUAL
13 AT LEAST THE SAME WEIGHT AS GIVEN THE HIGHEST OTHER NONCOST
14 EVALUATION FACTOR.

15 (4) IF A RESPONSIBLE OFFEROR WILL USE A SUBCONTRACTOR UNDER
16 A PROCUREMENT CONTRACT, PAST PERFORMANCE BY THE SUBCONTRACTOR
17 SHALL BE EVALUATED AS PART OF THE OFFEROR'S PROPOSAL.

18 (c) IN ADDITION TO THE PROVISIONS OF THIS SECTION, ANY PROCUREMENT
19 SUBJECT TO § 13-104.1 OF THIS SUBTITLE SHALL BE CONDUCTED IN ACCORDANCE
20 WITH THE PROVISIONS OF THAT SECTION.

21 (D) A unit shall publish a request for proposals in the same manner as required
22 for an invitation for bids.

23 [(d)] (E) (1) After receipt of proposals but before the procurement officer
24 awards the procurement contract, a unit may conduct discussions with an offeror to:

25 (i) CLARIFY AND VERIFY THE ACCURACY AND RELEVANCE OF
26 PAST PERFORMANCE INFORMATION SUBMITTED BY AN OFFEROR OR OTHERWISE
27 OBTAINED BY THE PROCUREMENT OFFICER AS IT RELATES TO THE PROCUREMENT;

28 (II) obtain the best price for the State; and

29 [(ii)] (III) ensure full understanding of:

30 1. the requirements of the State, as set forth in the request for
31 proposals; and

32 2. the proposal submitted by the offeror.

33 (2) If discussions are conducted, the unit:

34 (i) shall conduct the discussions in accordance with regulations
35 adopted under this Division II;

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1 (ii) shall provide an opportunity to participate to each responsible
2 offeror who submits a proposal that, in the judgment of the procurement officer, is
3 reasonably susceptible of being selected for award;

4 (iii) shall treat all of those responsible offerors fairly and equally;

5 (iv) may allow all of those responsible offerors to revise their initial
6 proposals by submitting best and final offers, if discussions indicate that it would be in the
7 best interests of the State to do so;

8 (v) may conduct more than 1 series of discussions and requests for
9 best and final offers; and

10 (vi) may not disclose to an offeror any information derived from a
11 proposal of or discussions with a competing offeror.

12 [(e)] (F) (1) Except as provided in paragraph (2) of this subsection:

13 (i) a proposal is irrevocable for the period specified in the request for
14 proposals; and

15 (ii) a best and final offer is irrevocable for the period specified in the
16 request for best and final offers.

17 (2) A procurement officer may allow an offeror to correct or withdraw a
18 proposal or best and final offer if correction or withdrawal is:

19 (i) allowed under regulations adopted under this Division II; and

20 (ii) approved in writing by the Office of the Attorney General.

21 [(f)] (G) After obtaining any approval required by law, the procurement officer
22 shall award the procurement contract to the responsible offeror who submits the proposal
23 or best and final offer determined to be the most advantageous to the State considering
24 the evaluation factors set forth in the request for proposals.

25 [(g)] (H) A unit shall publish in the Contract Weekly notice of a contract in excess
26 of \$25,000 awarded under this section, or a lower amount set by the Board by regulation
27 in accordance with Title 10, Subtitle 1 of the State Government Article.

28 13-104.1.

29 (A) THIS SECTION APPLIES TO ANY PROCUREMENT CONTRACT THAT:

30 (1) REQUIRES THE DEVELOPMENT OF COMPUTER HARDWARE OR
31 SOFTWARE AS A SIGNIFICANT COMPONENT OF A PROCUREMENT CONTRACT; AND

32 (2) IS ESTIMATED BY THE PROCUREMENT OFFICER TO EXCEED \$100,000.

33 (B) (1) THE PROCUREMENT UNIT SHALL DESIGNATE A SYSTEMS ANALYST
34 WHO SHALL HAVE FINAL DECISION AUTHORITY CONCERNING THE TECHNICAL
35 ASPECTS IN THE REQUEST FOR PROPOSAL PROCESS, EVALUATION OF OFFERS
36 SUBMITTED IN RESPONSE TO A REQUEST FOR PROPOSALS, AND THE
37 ADMINISTRATION OF A CONTRACT FOLLOWING ITS AWARD.

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1 (2) THE SYSTEMS ANALYST DESIGNATED UNDER PARAGRAPH (1) OF
2 THIS SECTION SHALL BE RESPONSIBLE FOR EVALUATION OF THE TECHNICAL
3 EXPERIENCE OF AN OFFEROR BASED ON PAST PERFORMANCE.

4 (3) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS
5 PRECLUDING THE APPOINTMENT OF ANY TEAM, GROUP, OR UNIT TO DEVELOP A
6 REQUEST FOR PROPOSALS OR TO EVALUATE PROPOSALS SUBJECT TO THIS SECTION
7 AS LONG AS FINAL DECISION AUTHORITY UNDER PARAGRAPH (2) OF THIS
8 SUBSECTION IS VESTED IN THE SYSTEMS ANALYST.

9 (C) ANY DETERMINATION OR APPROVAL REQUIRED UNDER THIS DIVISION II
10 BY A PROCUREMENT OFFICER RELATING TO A PROCUREMENT THAT IS SUBJECT TO
11 THIS SECTION SHALL REQUIRE A JOINT DETERMINATION OR APPROVAL BY BOTH
12 THE PROCUREMENT OFFICER AND THE SYSTEMS ANALYST.

13 (D) UNLESS THE PROCUREMENT OFFICER AND SYSTEMS ANALYST MAKE A
14 WRITTEN DETERMINATION THAT SUBMISSION OF A PROTOTYPE IS NOT FEASIBLE
15 PRIOR TO ISSUING A REQUEST FOR PROPOSALS, THE REQUEST FOR PROPOSALS
16 SHALL REQUIRE AN OFFEROR TO DEMONSTRATE A PROTOTYPE OF ANY COMPUTER
17 HARDWARE OR SOFTWARE THAT WOULD BE REQUIRED UNDER THE
18 PROCUREMENT CONTRACT.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1997.